

PATENT
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Adam Twiss
For : METHOD AND APPARATUS FOR
: TRAFFIC MANAGEMENT IN
: PEER-TO-PEER NETWORKS
Serial No.: 10/544,277
Filed : December 23, 2005
Art Unit : 2456
Examiner : Mai, Kevin S.
Attorney Docket No. : ALC 3520
Confirmation No. : 1316

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
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Sir:

This Pre-Appeal Brief Request is in response to the Office Action dated May 24, 2010, and further to the Notice of Appeal filed concurrently herewith.

Claims 75-89, 92-105, 108, 110-115, 117-123, and 126 are pending in this application, of which claims 75, 92, and 110 are independent. Applicant hereby requests review of the rejections in the above-identified application in view of the concurrently-filed Notice of Appeal.

On pages 3-13, the Office Action rejects claims 75-80, 87, 92-97, 108, 110-113, 123, and 126 under 35 U.S.C. § 103 as allegedly unpatentable over Pub. No. US2003/0208621 to Bowman (“Bowman”). On page 13-20, the Office Action rejects claims 81, 83, 86, 98, 100, 103, 114, 117, and 120 under 35 U.S.C. § 103 as allegedly unpatentable over Bowman in view of Pub. No. US2003/0062375 to Teodosiu (“Teodosiu”). On pages 20 and 21, the Office Action rejects claims 82, 99, and 115 under 35 U.S.C. § 103 as allegedly unpatentable over Bowman in view of Pub. No. US2004/0148434 to Matsubara et al (“Matsubara”). On pages 22-24, the Office Action rejects claims 84, 101, and 118 under 35 U.S.C. § 103 as allegedly unpatentable over Bowman in view of Teodosiu, further in view of Pub. No. US2002/0049760 to Scott et al (“Scott”). On pages 24-28, the Office Action rejects claims 88, 89, 104, 105, 121, and 122 under 35 U.S.C. § 103 as allegedly unpatentable over Bowman in view of Pub. No. US2004/0088646 to Yeager et al (“Yeager”).

Independent claim 75 recites: “controlling transport of said peer-to-peer messages at said gateway to limit propagation of said peer-to-peer messages into said second network portion, without limiting propagation of the other messages into the second network portion” (emphasis added). Similar subject matter appears in independent claims 92 and 110. Applicant respectfully submits that the references of record, alone or in combination, fail to disclose, suggest, or teach this subject matter.

On page 4, the Office Action correctly concedes that “Bowman does not explicitly disclose” this subject matter. In the next paragraph, the Office Action contradicts itself by alleging that Bowman would recursively render this subject matter obvious, relying upon Bowman itself for subject matter previously admitted to be absent from Bowman. Thus, Applicant respectfully submits that this obviousness rejection is clearly improper.

Independent claim 75 also recites: "identifying, with an Internet Service Provider (ISP) router, whether messages in the first network portion are peer-to-peer messages or other messages" (emphasis added). Similar subject matter appears in independent claims 92 and 110. Applicant respectfully submits that the references of record, alone or in combination, fail to disclose, suggest, or teach this subject matter.

On page 3, the Office Action alleges that Bowman provides this subject matter, relying upon paragraph [0053] of Bowman. However, Applicant respectfully submits that Bowman does not actually identify whether messages are P2P messages or other messages. Instead, Bowman's distribution sends "only P2P communications," as disclosed in paragraph [0053]. Thus, Bowman actually teaches away from the recited subject matter because Bowman does not provide a system with a mixture of P2P and other messages.

Independent claim 75 further recites: "routing all peer-to-peer messages in the first network portion with an intended destination in the second network portion outside of a network of an Internet Service Provider (ISP) to a gateway between peer-to-peer nodes residing on said first and second network portions" (emphasis added). Similar subject matter appears in independent claims 92 and 110. Applicant respectfully submits that the references of record, alone or in combination, fail to disclose, suggest, or teach this subject matter.

On page 4, the Office Action alleges that paragraphs [0048] and [0053] of Bowman somehow provide this subject matter. However, Applicant respectfully submits that the Office Action fails to identify a gateway between the peer-to-peer nodes. Moreover, the Office Action also lacks any routing to a gateway.

For the reasons listed above, Applicant respectfully submits that independent claims 75, 92, and 110 are allowable.

Claim 78 recites, in part: "**blocking** said peer-to-peer messages at said gateway" (emphasis added). Similar subject matter appears in claims 95 and 111. Applicant respectfully submits that the references of record, alone or in combination, fail to disclose, suggest, or teach this subject matter.

On page 5, the Office Action relies upon paragraph [0040] of Bowman for this subject matter. In response, Applicant respectfully submits that paragraph [0040] of Bowman actually discloses "dropping" messages if there is no need to send them on. Dropping messages is not the same as the recited step of blocking messages, as there is no indication that Bowman's dropping occurs because these message have been identified as peer-to-peer messages.

Claim 83 recites, in part: "**modifying** a response to a previous file search request such that said response does not indicate that a requested file may be found in said second network portion" (emphasis added). Similar subject matter appears in claims 100 and 117. Applicant respectfully submits that the references of record, alone or in combination, fail to disclose, suggest, or teach this subject matter.

On page 15, the Office Action correctly concedes that Bowman lacks this subject matter. To remedy this admitted deficiency, the Office Action relies upon paragraph [0039] of Teodosiu. In response, Applicant respectfully submits that Teodosiu does not modify a response. In fact, paragraph [0039] of Teodosiu declares that "gate server 120 may simply respond with the location(s) and allow the client service to directly access the resource on its own" (emphasis added).

A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). Also see MPEP § 2141.02. In this case, Applicant respectfully submits that Teodosiu teaches away from the claimed invention by suggestion that a client service should directly access the resource on its own.

Claim 86 recites, in part: "modifying said response to indicate that said requested file is obtainable from a peer-to-peer node located on said third network portion" (emphasis added). Similar subject matter appears in claims 103 and 120. Applicant respectfully submits that the references of record, alone or in combination, fail to disclose, suggest, or teach this subject matter.

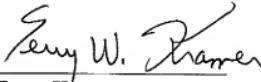
On page 15, the Office Action relies upon paragraph [0075] of Bowman for this subject matter. In response, Applicant respectfully submits that Bowman does not modify any responses. Instead, as recited in paragraph [0075], Bowman forwards a query message if a file has not been located. Forwarding a query message is not the same as modifying a response.

Claims 76-89 also depend from claim 75. Claims 93-105 and 108 depend from claim 92. Claims 111-115, 117-123, and 126 depend from claim 110. Thus, claims 76-89, 93-105, 108, 111-115, 117-123, and 126 are allowable at least due to their respective dependencies from allowable base claims.

Therefore, Applicant respectfully requests that the rejections of claims 75-89, 92-105, 108, 110-115, 117-123, and 126 under 35 U.S.C. § 103(a) be withdrawn.

In the event that the fees submitted prove to be insufficient in connection with the filing of this paper, please charge our Deposit Account Number 50-0578 and please credit any excess fees to such Deposit Account.

Respectfully submitted,
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